

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Plaintiff,)	No. 000228B
)	
v.)	
)	
THOMAS CREEK LUMBER & LOG CO.,)	
)	
Defendant.)	DECISION

The Department of Revenue appealed the act of the Linn County Board of Property Tax Review (Board) in lowering the assessed value of property identified by Account No. 0005393 for the 1999-00 tax year. This is the property of Thomas Creek Lumber & Log Co. ("Thomas Creek"). The decision of the Board was to lower the assessed value of the property from \$1,657,589 to \$717,742.

The Department of Revenue was represented by its counsel, Douglas Adair. Thomas Creek appeared through its President, Brent Walker.

* * * * *

Two points are raised in the appeal of this whole log chipping plant. The primary issue is its assessed value. A secondary matter is what evidence of value the court may consider in making this determination. The Department of Revenue pressed, through a Motion in Limine, for the exclusion of Thomas Creek's proposed exhibits, received by the department and the court less than ten days before trial, contrary to TCR-MD 10 C.¹

¹*** Each party shall provide the court and the other parties with copies of all exhibits to be introduced into evidence in support of that party's case. **All exhibits must be either postmarked at least 14 days before the trial date or physically received at least 10 days before the trial date.** A magistrate may exclude any evidence received after that time, sanction any party who withholds information, or use any other measure the magistrate considers appropriate."

Turning to the first issue, the assessed value of the property, for its part the department presented the expertise of its appraiser, Mary Seaton, who opined that the total value of this property for the year at issue was on the order of \$1,030,710, distributed with \$96,210 on the land, \$218,200 on the building and structures, and \$716,300 on the machinery and equipment. Ms. Seaton relied upon the cost approach, specifically applying the principle of substitution. In her analysis she looked to the expense of acquiring used equipment similar to that in place at Thomas Creek, with additions for the cost of freight, installation, wiring, foundation, layout and engineering. Ms. Seaton recognized the difficulties in obtaining replacement parts for obsolete items, such as the large debarker dating from 1963, in her depreciation factor. Understanding that customers prefer chips from whitewood, and that this element of economic obsolescence is difficult to capture in the cost approach, Ms. Seaton applied a 30% rate, taken from other wood products industries, to temper her conclusions.

Other opinions of value came from Defendant. Mr. Walker, who is the president of Thomas Creek and holds a bachelor's degree in engineering as well as bachelor and master's degrees in business from Oregon State University, testified. His hindsight is that the chip business is in decline. Thomas Creek was originally built to produce whitewood chips from hemlock long butt flawed by windshake. With the closure of logging from federal lands, this source became unavailable. Young timber obtained from thinning operations was an inferior substitute, as these smaller logs could no longer produce whitewood chips of a sufficient quality. Profits accordingly fell below expectations. Particular defects, such as the debarker being less than maximally efficient for the smaller logs now available, were noted, as was the general distress of

the northwest paper mills. Mr. Walker specifically told of the combined effects mill closures, dramatically declining chip exports, and competition from the chipmaking operations of sawmills has had on his sales.

Defendant offered other testimony from Roger P. Ash, of The Ash Organization, Inc. Mr. Ash is a liquidator of timber equipment. It is this testimony that Plaintiff wished to exclude for failure to comply with TCR-MD 10 C, and which forms the second issue of this appeal. Mr. Ash stated that the fair market value of the machinery and equipment at issue was \$450,000. Subsequent questioning underscored that this opinion did not include land, buildings, paving, and yard improvements. Mr. Ash's opinion also did not include freight, associated labor, wiring, motor controls, or allied installation costs such as foundations and engineering. In his statements Mr. Ash did not opine that the property was worth less than \$1,000,000 on the assessment date; instead Mr. Ash noted that he could not form such a conclusion without considering the value of the land.

COURT'S ANALYSIS

Mr. Thomas testified, with great credibility, that he would sell the property tomorrow for Defendant's appraised value of \$1,000,000. However, that does not prove the chipping plant is worth the Board's value of \$717,742. In this instance the court finds the appraisal of the property the most persuasive evidence.

As to the appraisal, Mr. Thomas' criticism is that it simply makes no sense to attribute values under the cost approach, many times higher than his acquisition costs, to the assets at issue. However, the conclusion of the court is that in forming this criticism Mr. Thomas has neglected to include all the expenses associated with the acquisition and integration of the machinery and equipment, of which his expertise was

probably the most significant component. Ms. Seaton used reasonable values for the acquisition costs of the equipment. To these values she added the expenses of integrating these items into a comprehensive operation, and correctly applied depreciation. Mr. Thomas' strongest points, that paper-making, and its dependent operations such as Thomas Creek, is an industry in decline, was accounted for in at least two points in Ms. Seaton's appraisal- first, by her use of the used equipment approach, and next by her application of an obsolescence factor of approximately a third of the value otherwise indicated.

Proof of the difficulty in valuing these assets comes from the materials offered by Mr. Ash. The court declines Plaintiff's invitation to provide definitive guidance as to the application of TCR-MD Rule 10 C, for under the facts of this case Mr. Ash's opinion supports, rather than challenges, Plaintiff's requested relief. Mr. Ash's belief was that Thomas Creek's bare machinery and equipment was worth on the order of half a million dollars. This opinion is entirely consistent with the conclusion that it would take another half a million to purchase a green field and add the buildings, yard improvements, engineering, electrical service, motor controls, and other accessories necessary to begin actually making chips.

CONCLUSION

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal should be granted. The value at which the property shall be taxed is \$1,030,710, a total less than the original value set by the department of \$1,657,589 but appreciably above the value set by the board of \$717,742.

Dated this _____ day of February, 2002.

SCOT A. SIDERAS

PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON FEBRUARY 8, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 8, 2002.